THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.20983 of 1998

DATE: 1-9-2005

Between:

The Depot Manager, APSRTC

Medak Depot, Medak …… Petitioner

And

1. T.Vittal and another …… Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.20983 of 1998

ORAL ORDER:

This writ petition was dismissed by order dated 3-8-1998 holding that the award of the Labour Court did not suffer from any illegality and there was no point which requires judicial review of the order. The Division Bench by order in W.A.No.1580 of 1998 dated 8-10-1998 remitted the matter for disposal on merits observing that no reasons are given in the judgment of the learned single judge and reasons are to be given for passing orders in the matter.

The award of the Labour Court II, Hyderbad in I.D.No.137/93 dated 30-12-1996 is impugned in this writ petition.

Facts, to the extent necessary for the purpose of this writ petition, are that the respondent – workman was appointed as a conductor on temporary basis with APSRTC with effect from 8-6-1979 and was attached to Medak Bus Depot. He was censured twice and his annual increments were deferred twice. For his unauthorized absence from duty, with effect from 19-9-1989, he was issued charge sheet dated 2-11-1989 enumerating the following charges:

"1. For your unauthorized absence to duty w.e.f. 19.9.80without any intimation and permission which constitutes misconduct in terms of Reg.28 (xxvii) of APSRTC Employees Conduct Regulations, 1963.

2. For your habitual irregular attendance as you are away from duty for 104 days for the period from January 1989 to October, 1989 which constitute misconduct in terms of Reg.28(xxvii) of APSRTC Employees' Conduct Regulations, 1963:

Leave : 12 days

R.Sick : 28 days

Absent : 20 days

Private sick : 44 days

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104 days ”

The workman submitted his explanation thereto on 30-11-1989, a domestic enquiry was conducted and since the charges alleged against the workman were held proved, he was held guilty of the charges and was issued show cause notice asking him to explain as to why he should not be removed from service. A copy of the enquiry report was also furnished to the workman along with show cause notice dated 23-6-1990. Final orders were passed on 30-7-1990 removing the respondent – workman from service. Appeal preferred by him was rejected on 16-6-1992.

The workman raised a dispute before the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947. The Labour Court upheld the validity of the domestic enquiry. While examining the matter under Section 11-A of the Industrial Disputes Act, the Labour Court took note of the fact that the workman had reported sick and was admitted to Government Civil Hospital, Siddipet on 17-9-1989, was subsequently admitted in the RTC Clinic where he took rest upto 9-11-1989 and despite having reported for duty on 10-11-1989, the certificate submitted by him in proof of his sickness, was not accepted by the management. The Labour Court held that the totality of the circumstances, the nature of sickness and the evidence placed on record including the medical certificate, make it clear that the punishment imposed was disproportionate to the charges held proved and was harsh in nature. The petition filed by the workman was allowed and the order of removal was set aside. The Labour Court while directing reinstatement of the workman into service with benefits like continuity of service etc., directed payment of only 25% back wages denying 75% thereof to the workman. The said award is challenged in this writ petition by the APSRTC.

Denial of 75% back wages to the workman is as a measure of punishment. It cannot be said that exercise of discretion by the Labour Court, under Section 11-A of the Industrial Disputes Act, in substituting punishment of removal passed by the APSRTC by one of denial of 75% of back wages is a punishment which shocks the conscience of this Court. Under Section 11-A of the Industrial Disputes Act, the

Labour Court has been conferred the powers to examine the proportionality of punishment. Exercise of its discretion in this regard would not, normally, be interfered with in proceedings under Article 226 of the Constitution of India unless the punishment, as substituted by the Labour Court, is one which could not have been imposed at all or is one which shocks the conscience of this Court. Denial of 75% back wages for unauthorized absence of 104 days instead of removal from service, cannot be said to be a punishment which could not have been imposed at all or to be one which shocks the conscience of this Court. This exercise of discretion by the Labour Court does not call for any interference in this writ petition.

The writ petition is accordingly dismissed. No order as to costs.

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1-9-2005

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